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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,256	03/11/2004	Zichria Zakay-Rones	85189-5900	1732

28765 7590 06/27/2006

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EXAMINER

WHITEMAN, BRIAN A

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/800,256

Applicant(s)

ZAKAY-RONES ET AL.

Examiner

Brian Whiteman

Art Unit

1635

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1.
Claim(s) objected to: None.
Claim(s) rejected: 2-5, 24-30 and 46-52.
Claim(s) withdrawn from consideration: 6-14 and 55-65.

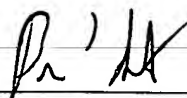
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 6/14/06
13. ☐ Other: _____.

**BRIAN WHITEMAN
PATENT EXAMINER**



Continuation of 3. NOTE: The proposed amendment to the claims 2 and 46 would require further consideration and search.

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant's argument that "replication deficient NDV" has written support in the instant specification (page 26) since the prior art indicates that lentogenic NDV can replicate only in the presence of Mg²⁺ and DEAE or in the presence of trypsin in vivo, the argument is not found persuasive because as indicated by applicant lentogenic strain can replicate under several conditions. Replication deficient or replication defective indicates to the skilled artisan that a virus would not replicate under any conditions. The virus is lacking components necessary for viral replication. As displayed in page 26 of the instant specification, Lentogenic NDV replicates in cell cultures just not as efficiently as other strains of NDV.

In response to applicant's argument that lentogenic NDV was well known in the art as an inherently replication deficient or replication defective virus at the time the application was filed, the argument is not found persuasive because other than applicant's assertion there is no evidence of record to support applicant's assertion. See *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Before writing the last office action, the examiner performed a search for the term "replication defective or replication deficient NDV wherein the NDV is lentogenic" and got no hits for the term in the prior art.

The argument with respect to the new matter rejection for claim 27 is moot because the proposed amendment to claim 27 was not entered. The argument with respect to the written description rejection for claims 46 and 50 is moot because the proposed amendment to claims 46 and 50 was not entered. It is noted that applicants have made a deposit of HUU in the ECACC under terms of the Budapest Treaty and will file an affidavit upon deposit.

The argument with respect to the 102(e) rejection for claim 2 and claims dependent therefrom is moot because the proposed amendment to claim 2 was not entered.